

BULLETIN 1084

OCTOBER 24, 1955.

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THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1084

OCTOBER 24, 1955.

1. COURT DECISIONS - PASSAIC COUNTY RETAIL LIQUOR DEALERS'
ASSOCIATION v. PATERSON ET ALS. - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-277/54

PASSAIC COUNTY RETAIL LIQUOR)
DEALERS' ASSOCIATION,)

Appellant-Appellant,)

-vs-)

OPINION

BOARD OF ALCOHOLIC BEVERAGE)
CONTROL FOR THE CITY OF PATERSON,)
and BERTELLI'S LIQUOR STORE, INC.)
and DIVISION OF ALCOHOLIC BEVERAGE)
CONTROL,)

Respondents-Respondents.)

Argued August 15, 1955. Decided October 3, 1955.

Before Judges Schettino, Hegarty and Speakman

Mr. Robert Goodman argued the cause for appellant;
Mr. Theodore D. Rosenberg, attorney

Mr. Ervan F. Kushner argued the cause for respon-
dent, Board of Alcoholic Beverage Control for
the City of Paterson

Mr. Samuel B. Helfand argued the cause for respon-
dent, Division of Alcoholic Beverage Control;
Grover C. Richman, Jr. Attorney General of New
Jersey, attorney

The opinion of the court was delivered by

SCHETTINO, S.J.A.D.
(temporarily assigned)

Appeal is taken from the action of respondent, New Jersey Division of Alcoholic Beverage Control, in approving the granting of an application by the Board of Alcoholic Beverage Control of the City of Paterson for transfer of a plenary retail consumption license from person to person and place to place.

The Paterson Board of Alcoholic Beverage Control granted the application of respondent, Bertelli's, Inc. (then Bertelli's Liquor Store, Inc.), for transfer of a plenary retail consumption license from Edward A. Levy, Receiver in Bankruptcy for the 230 Market Street Corporation, to respondent Bertelli's, Inc. (formerly Bertelli's Liquor Store, Inc.) and from premises 230 Market Street to 218-230 Redwood Avenue, Paterson, premises then in the process of construction. Because the proposed premises, according to a plan previously submitted, would not constitute "a bona fide barroom", the State Director of Alcoholic Beverage Control, on appeal by this appellant remanded the matter on May 21,

1954 to the local board "for further action in accordance with the foregoing conclusions". The Director also stated that "The entire proposal for the erection of a small bar in the rear of the premises and a large 'package goods department' in the front part thereof is obviously for the purpose of evading the spirit and intention of the present law in obtaining a privilege to which it is not legally entitled". He suggested that the name of Bertelli's Liquor Store, Inc. referred to a "package goods store" rather than to a tavern and thus might mislead the general public.

On June 3, 1954, respondent, Bertelli's Inc. under the name of Bertelli's Liquor Store, Inc. filed application with the Pater-son Board of Alcoholic Beverage Control for a renewal of the license in question. At a meeting of the Board held on June 9, 1954, Bertelli submitted an amended plan. Certain "remarks" were addressed to the Board by the attorneys for Bertelli and an objec-tor, but no hearing was held nor testimony taken. An announce-ment was made that "this matter would be continued at a later date."

On June 3rd and 10th, 1954, legal newspaper advertisements, pursuant to the June 3rd renewal application, were published. These advertisements were later deemed unacceptable by the local Board in that they did not include a notice advising that the plans and specifications of construction were filed at the City Board's office available for public inspection. New, corrected advertisements were published by respondent corporation in another newspaper on June 22 and June 29, 1954. The June 3rd application was not amended to show the new dates of publication or the change of newspaper. On June 29, 1954, a document dated June 16, 1954, certified by the Secretary of State of New Jersey, was filed with the City Board on behalf of the applicant indi-cating a change of corporate name to Bertelli's, Inc.

At a special meeting on June 30, 1954, at which the appel-lant's attorney was present and participated in the discussion, argument was had on the amended plan as a result of which the Board reaffirmed its previous grant of the transfer "effective immediately for the sole purpose of permitting [a] renewal" and directed that the license shall not be issued until satisfactory completion of the premises. The record before us fails to dis-close any objection to the renewal made by appellant.

We first dispose of the question as to just what is the subject matter of the appeal. Appellant's brief and oral argu-ment are replete with reference to alleged reversible action on the part of the local board and the State Director in granting and approving the renewal and the transfer of the license. How-ever, appellant's notice and petition of appeal to the Director state that its plea is for a reversal of the local board's action in approving the transfer. Appellant's references to transfer appear several times; no reference is made to renewal. The answers filed by the local board and Bertelli refer to transfer and no reference is made to renewal. The conclusions and order here appealed from refer solely to transfer, as did the conclu-sions and order of the first appeal to the State Director in this case.

We will limit our determinations on appeal to what was considered below and not what is outside the appeal record.

R. S. 33:1-12.23, reads as follows:

"The holder of a plenary retail consumption license or a seasonal retail consumption license, after the effective date of this act, may sell and display for sale alcoholic beverages in original containers for consumption off the licensed premises only in the public barroom of the licensed premises, such barroom being a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises; * * *"

with a proviso that does not apply since the license in question does not contain the "Broad package privilege" notation set forth in Rule 4, State Regulations No. 32.

In the prior appeal, a grant of the transfer of this license was remanded for further consideration of the question of whether or not the applicant's proposed premises and method of conducting its business would comply with the statute and the regulations.

At that time the plans filed with the local board showed the building proposed to be licensed as having a frontage of 14 feet six inches and a length of 65 feet; that approximately four feet from the front entrance and adjacent to each wall divers shelves were to be erected; that the shelves to the left were to be 24 feet in length and the shelves to the right 21 feet in length; that at the end of the right shelving and at right angles thereto a counter about eight feet long and two feet wide was proposed to be erected; that approximately four feet behind this counter toward the rear of the premises a refrigerator eight feet by eight feet was to be installed; that to the left of the refrigerator and beyond the shelving attached to the left wall a small table, approximately two and one-half feet by two feet, was to be placed; that about four feet beyond this table there was to be erected a ten-foot curved bar, the short curved end thereof attached to the left wall, which bar would be approximately eight and one-half feet from the rear of the building. Some distance beyond the refrigerator toward the end of the building another table was to be placed. The counter in front of the refrigerator was to be used solely for wrapping package goods for off-premises consumption. The plans did not show whether or not any plumbing was to be installed in connection therewith. It was the applicant's intention to dispense liquor over the bar situated in the rear of the premises but, if a patron happened to be in the front of the store and desired a drink of alcoholic beverages for immediate consumption, it would be served to him in the front.

On June 9, 1954, a new plan was submitted by Bertelli showing the enlargement and relocation of the bar. According to the new plan the bar had an over-all length of 20 feet, with a sink, a 10-foot back bar, and eight bar stools and had been moved from the rear part of the building behind the refrigerator to the front of the refrigerator in plain view of anyone entering the front door. The plan shows 24 feet of shelving on one side of the room and 27 feet of shelving on the other side. The Director found:

"From the foregoing it is clear that the factual situation has changed materially since the matter was remanded to respondent Board. Neither the premises nor the manner of conducting the business is open to the attack which resulted in the remand. It now appears that the proposed premises, if completed and conducted as indicated by the plans and the testimony, will comply with the statute and regulations."

The appellant argues that the amended plans were not materially and substantially altered so as to warrant the Director's conclusions and order; that it is true that respondent corporation did to a degree rearrange the rear portion of his premises, and the corporate name was suitably changed, but contends that the root of the "evil" was in no way diminished. On the contrary, the amended plans call for an enlargement of the "packaged goods" area. Instead of the first 24 feet of the store being solely devoted to the vending of "package goods", 27 feet were allocated for this purpose. The attempted subterfuge was exaggerated instead of being eliminated.

Appellant also contends that installing a nominal bar and related fixtures in a "package store" does not convert the premises into a "public barroom" within the true spirit and meaning of the statute; that the statute was designed to prevent the emergence of "package stores" at premises possessing a plenary retail consumption license without the "broad package privilege," and that the physical arrangement of the premises can only lead one to conclude that the bar in question is not installed with the intent of maintaining a bona fide barroom, but it is instead, designed merely to facilitate the operation of a "package store" and thereby evade the spirit and intention of the law.

The action of the municipal board and the action of the director rest in sound discretion and may not be disturbed by this court in the absence of a showing of an abuse of that discretion Bivona v. Hock, 5 N. J. Super. 118, 120 (App. Div. 1949); Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946).

We are asked to reverse the exercise of a legislative grant to the local board and the Director and to hold that there was an abuse in the exercise of a discretionary power respecting transfers under R. S. 33:1-26. The Legislature has vested wide powers in the regulatory authorities in order to control a field in which evils have arisen and may easily arise. In re Larsen 17 N. J. Super. 564, 571 (App. Div. 1952). The legislative mandate "is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed," R.S. 33:1-73.

Guided by these statutory and judicial authorities, we are called upon to decide a narrow issue as to whether or not the determination that the revised plans complied with the requirement of "public barroom" as defined in R.S. 33:1-12.23 which provides in part:

"such barroom being a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises;
* * *"

The constitutional attack on this provision to the effect that a power is here delegated to an administrative agency without setting up reasonable standards to guide the agency was rejected by Judge Colie for the Appellate Division in Coral Lounge and Cocktail Bar, Inc. v. Hock, 5 N. J. Super. 163, 166 (App. Div. 1949). We feel that there is sufficient definitive admeasurements of what is a "public barroom" as set forth in R. S. 33:1-12.23. True, each application must be considered in the light of the plans and other specific facts presented.

Our examination and comparison of the original and amended plans bring us to the same conclusion as did the Director, namely, that the applicant had complied with R.S. 33:1-12.23 and that we find no abuse of discretion in the local board and the Director.

Appellant raises a constitutional point in that it was denied due process of law. Appellant contends that the uncontradicted evidence reveals that the local board on June 9th, 1954, without notice to parties in interest, conducted a partial hearing and heard material testimony from representatives of the respondent corporation. Appellant, a party in interest, was not present. It also contends that the chairman of the local board, at his "own expense" and on his "own time," brought the amended plans of the proposed barroom to Newark and privately consulted with the Director and Assistant Director of the State Division of Alcoholic Beverage Control. In response to his request, they gave their "oral opinion" as to the acceptability of those specific plans, which opinion was immediately reported to the local board who then proceeded to adopt it.

As a result of this private meeting, and the action taken therein, on appeal to the State Division of Alcoholic Beverage Control from the local board's ruling, the Director and Assistant Director were placed in the position of reviewing their own previous decision. Under such circumstances, is there a fair opportunity for a reversal? Appellant concludes that such action deprives it of due process of law.

Our examination of the record does not bear out appellant's contentions. No hearing was held or testimony taken on June 9, 1954. The argument that the board, on June 9, 1954, "conducted a partial hearing and heard material testimony" finds no support in the record. The attorney for the applicant appeared before the board for the purpose of submitting the amended plan, and certain "remarks" were addressed to the board by him. The record shows that appellant's attorney was corrected before the State Hearing Officer when he referred to "testimony" and he agreed with the local board clerk's substitution of "remarks" in place of "testimony." The plan was "made part of the records" and it was stated that "this matter would be continued at a later date." At the meeting of June 30 the appellant's attorney participated in the discussion before the board.

Shortly before June 30 the chairman of the local board went to the State Director and requested an opinion with regard to the definition of a bona fide barroom. He was told that no dispositive opinion could be rendered since the Director's "position requires that he consider appeals on any action of a municipal board." The Director's conclusions and order state that "this matter was not prejudged," that he "did not pass or rule upon the new plan," and that the chairman was advised that the board must "make its own determination" which would be "subject to appeal to the Director."

Appellant's position cannot be sustained. R.S. 33:1-23 directs the Director to cooperate with municipal licensing authorities in enforcing the law, and R.S. 33:1-39 requires the Director to issue instructions for the guidance of municipal licensing authorities. In Rutherford Lodge No. 547 v. Hock, 1 N.J. Super. 223, 227 (App. Div. 1949), the court, after finding that letters written by the then Commissioner expressing his opinion with respect to certain issues in the case "did not constitute a final decision or action by him and, therefore, are not reviewable", stated:

"For many years the Commissioner [now Director] has adopted the practice of furnishing his opinions and views to issuing authorities, licensees and others who have communicated with him and who have posed certain questions and

problems with which they have been faced in connection with the administering of the Alcoholic Beverage Law and the applicability thereof with respect to the conduct of their licensed business. Such advisory opinions have served a useful purpose in that they have clarified many perplexing and confusing problems encountered by the issuing authorities, licensees and others affected by the Alcoholic Beverage Law. These advisory opinions of the Commissioner have had a salutary effect and have been conducive to a satisfactory and successful administering of the Alcoholic Beverage Law by the Commissioner of Alcoholic Beverage Control, to whom that task is entrusted by the express provisions of the Act. R.S. 33:1-23."

In Central Home Trust Co. v. Gough, 5 N. J. Super. 295, 300 (App. Div. 1949), the court stated that a contrary view:

"would unnecessarily impede the agency's proper discharge of its continuing responsibility to administer the provisions of its governing act in the public interest"

and continued:

"From day to day agencies receive numerous applications for approvals and similar determinations and informal responses are expeditiously sent, without any contemplation by either the applicant or the agency that the agency will be barred from later reaching a contrary conclusion upon a more complete presentation at formal hearing."

See also Federal Trade Com. v. Cement Institute, 333 U. S. 683, 68 S. Ct. 793, 92 L. Ed. 1010 (1948), and United States v. Morgan, 313 U. S. 409, 421, 61 S. Ct. 999, 85 L. Ed. 1429 (1941).

Finally, the record shows and appellant admits that a hearing de novo was had before the State Division of Alcoholic Beverage Control with full opportunity to present proof and argument, and the Director's conclusions and orders were based on the evidence adduced at that hearing. Mazza v. Cavicchia, 15 N. J. 498 (1954).

Affirmed.

2. APPELLATE DECISIONS - EISENHARDT v. CAPE MAY.

MAUD F. EISENHARDT,)	
Appellant,)	
-vs-)	ON APPEAL
)	O R D E R
BOARD OF COMMISSIONERS OF)	
THE CITY OF CAPE MAY,)	
Respondent.)	

Charles W. Sandman, Jr., Esq., Attorney for Appellant.
 Malandra & Tomaselli, Esqs., of Counsel, for Appellant.
 Nathan C. Staller, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant is the holder of a plenary retail consumption license for premises at 1287 Washington Street, Cape May. She appealed from the action of respondent whereby it suspended her license for thirty days after finding her guilty on a charge alleging that she served alcoholic beverages to a minor in violation of Rule 1 of State Regulations No. 20. Respondent ordered that said suspension should become effective at 12:00 Noon July 30, 1955, and appellant's premises were closed from that time until approximately Noon July 31, 1955, when the license certificate was returned to appellant pursuant to a restraining order signed by a Judge of the Superior Court. Upon the filing of the appeal herein I entered an order on August 4, 1955, staying respondent's order of suspension pending entry of a further order herein. R. S. 33:1-31. Thereafter the Superior Court action was dismissed pursuant to a stipulation of dismissal filed therein.

The parties have entered into a stipulation in this case wherein it is stipulated and agreed that the appeal be dismissed, and that the order of respondent be restored. Under the circumstances, appellant should be required to serve only the balance of said suspension. Arnone v. Red Bank, Bulletin 1034, Item 3.

In view of the fact that the summer season has ended, no effective penalty can be imposed at the present time. Hence, the effective dates for the suspension will be fixed by further order which will be entered by me herein after the licensed premises have reopened for business for the 1956 season. Engelhorn v. Belmar, Bulletin 1083, Item 1.

Accordingly, it is, on this 3rd day of October, 1955,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-14, issued by the Board of Commissioners of the City of Cape May to Maud F. Eisenhardt, for premises 1287 Washington Street, Cape May, whether held by her or transferred to any other person, be suspended for a period of twenty-nine (29) days, the effective dates of said suspension to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
 Director.

3. APPELLATE DECISIONS - FERDINAND v. NEWARK.

LOUIS A. FERDINAND,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
)	
Respondent.)	
-----)	
Sidney C. Swirsky, Esq. and Lawrence Friedman, Esq., Attorneys)	
)	for Appellant.
Vincent P. Torppey, Esq., by Nicholas Albano, Esq., Attorney)	
)	for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's plenary retail consumption license for a period of ten days, effective May 9, 1955, after adjudging him guilty in disciplinary proceedings on a charge alleging that on August 22, 1954, he allowed, permitted and suffered a brawl on his licensed premises, in violation of Rule 5 of State Regulations No. 20. The licensed premises are located at 424 Mulberry Street, Newark, New Jersey.

Upon the filing of this appeal on May 6, 1955, an Order was entered by me on that date staying respondent's Order of suspension until the entry of a further order herein. R.S. 33:1-31.

Transcript of the proceedings before respondent was submitted in evidence at the hearing on appeal and additional testimony was presented as provided by Rule 8 of State Regulations No. 15, and on August 22, 1955, after final hearing herein, counsel for the respective parties appeared before me on oral argument.

Appellant in his petition alleges, inter alia, that the action of respondent was erroneous in that its finding of guilt was contrary to the weight of the evidence.

An examination of the record discloses that the only point of agreement between the parties hereto is that on Sunday, August 22, 1954, Wesley Elan committed an assault upon the person of Joseph Pickett, the complaining witness herein. Otherwise, the case presents a divergence of evidence, particularly with respect to the all-important fact of the locus of the assault.

To establish appellant's guilt, respondent relies primarily upon the uncorroborated testimony of the complaining witness, Pickett, who, in substance, testified that on the day in question he entered defendant's licensed premises between 7:00 and 8:00 p.m., fell asleep at a table therein, and upon awakening was accosted by Elan and that "One of them quiet easy family arguments" ensued; that he started to leave the premises and was intercepted by Elan who thrice stabbed him in the left shoulder; and that the licensee who was tending bar "was nowhere near where he could have stopped, or defended, or stopped it".

Appellant testified that he alone tended bar on the day in question; that Pickett entered his establishment shortly after 12:00 noon and fell asleep at a table therein; that Pickett awoke

around 6:30 or 7:00 p.m. and conversed with Elan, after which both left the licensed premises; that at about 8:00 or 9:00 p.m., he heard a chair fall and saw Pickett, who had returned to the tavern, pick it up; that he ran from behind the bar and took the chair from Pickett; that Pickett told him he was cut but refused hospitalization and left the premises; that Pickett returned in a half hour, using vile and filthy language and demanded money to phone the police, and upon being refused, left the premises; and that at 9:50 p.m., Pickett returned to the tavern accompanied by two police officers who presently sent him to a hospital. Appellant's testimony that no argument or brawl occurred on his licensed premises on the day in question was corroborated in all respects by five patrons who were present therein from 6:00 p.m. until after the arrival of the police.

Elan testified that he and Pickett had been in defendant's licensed premises; that he had some words with him concerning a trivial amount of money; and that they left the premises together and engaged in a fight on the curb in front of the tavern which resulted in his cutting Pickett.

After carefully considering the record herein, including oral argument of counsel for the respective parties, I find that respondent has failed to prove by a preponderance of the credible testimony that a brawl occurred on the licensed premises. Even accepting at face value the complaining witness' testimony that he was struck with a knife while inside the tavern, there is nothing to indicate that the licensee could have prevented the occurrence. In fact, the complaining witness, in his testimony hereinabove quoted, definitely absolves the licensee. Cf. Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3. I conclude, therefore, that the finding of guilt by respondent is contrary to the weight of the evidence and its action should be reversed.

Accordingly, it is, on this 5th day of October, 1955,

ORDERED that the action of respondent be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HIRAM B. SHALLCROSS & ROSE SHALLCROSS)
T/a THE ANTLERS)
W/s Delsea Drive, Franklin Township)
PO Franklinville, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of Franklin Township (Gloucester County).)

William A. Gravino, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that on August 10, 1955, they sold, served and delivered alcoholic

beverages to two minors and permitted the consumption of such beverages by said minors in and upon their licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that, as a result of a report received from the New Jersey State Police, ABC agents obtained signed sworn statements from Donald --- (age 22), Stephen --- (age 19) and Warren --- (age 18). From these statements it appears that the adult and the two minors entered defendants' licensed premises at about 9:00 p.m. on August 10, 1955; that they started to play darts; that subsequently the two minors sat at a table and Donald went to the bar and ordered three glasses of beer; that, after he obtained the three glasses of beer, Donald returned to the table and placed in front of each of the minors a glass of beer, the contents of which were consumed by the minors; that, approximately forty-five minutes later, Donald purchased a second round of beer at the bar, and that the same procedure was followed with this round of drinks. The statements obtained from the two minors substantially corroborated the foregoing facts and, in addition thereto, Warren --- stated that, on previous visits, he had been served beer by a bartender known to him as "Hi" who never questioned him as to his age. The statements indicate that the three individuals left the licensed premises at about 11:30 p.m.

In alleged mitigation Hiram B. Shallcross states that, prior to the evening in question, Donald had submitted to him proof that he was of full age and, "since one of the young men had been in previously and had been questioned concerning his age", he "felt satisfied that the young men were of age." He admits that on two occasions he placed three glasses of beer on the bar and took the money from the bar.

Defendants have no prior record. I shall suspend defendants' license for ten days (the minimum penalty in a case involving two minors over eighteen years of age). Re Goldsmith, Bulletin 1076, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 26th day of September, 1955,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of Franklin Township (Gloucester County) to Hiram B. Shallcross & Rose Shallcross, t/a The Antlers, for premises on w/s Delsea Drive, Franklin Township, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. October 3, 1955, and terminating at 3:00 a.m. October 8, 1955.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL L. & SOPHIE M. LACHOWICZ)
T/a THE THREE BEES INN)
Delsea Drive & Coles Mill Road)
Franklin Township)
PO Franklinville, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-1, issued by the Township Committee of Franklin Township (Gloucester County).)

William A. Gravino, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that on August 11, 1955, they sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by said minors in and upon their licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that, after Donald --- (age 22), Stephen --- (age 19) and Warren --- (age 18) left the Shallcross premises (see Re Shallcross, decided herewith), they proceeded to defendants' licensed premises, which they entered at about 12:30 a.m. August 11, 1955. In the statement obtained from Donald --- he says that he did not buy any beer for the minors but that he did see them drink three glasses of beer. In his statement Stephen says that, while he was in defendants' premises, he had three glasses of beer which were purchased by some of his friends. He also alleges that he had purchased beer in defendants' premises on a few occasions prior to August 11, 1955. In his statement Warren says that he drank two glasses of beer which he purchased from the bartender, and that he drank three additional glasses of beer which were bought for him by some friends.

In alleged mitigation it is represented that, on the morning in question, Michael L. Lachowicz questioned Stephen --- as to his age and that Stephen verbally stated that he was twenty-four years old. It is not alleged that any person connected with defendants' licensed business obtained from either of the minors a representation in writing that he was twenty-one years of age or over as required by R.S. 33:1-77.

Defendants have no prior adjudicated record. Under all the circumstances of this case, I shall suspend defendants' license for ten days (the minimum penalty in a case involving two minors over eighteen years of age). Re Goldsmith, Bulletin 1076, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 26th day of September, 1955,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of Franklin Township (Gloucester County) to Michael L. & Sophie M. Lachowicz, t/a The Three Bees Inn, for premises at Delsea Drive & Coles Mill Road, Franklin Township, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. October 3, 1955, and terminating at 3:00 a.m. October 8, 1955.

WILLIAM HOWE DAVIS
Director.

ACTIVITY REPORT FOR SEPTEMBER 1955

ARRESTS:

Total number of persons arrested	-----	38
Licensees and employees	----- 2	
Bootleggers	----- 34	
ABC agent impersonators	----- 2	

SEIZURES:

Motor vehicles - cars	-----	5
- trucks	-----	2
Stills - over 50 gallons	-----	3
- 50 gallons or under	-----	3
Nash - gallons	-----	13,214.00
Distilled alcoholic beverages - gallons	-----	618.14
Wine - gallons	-----	3.37
Brewed malt alcoholic beverages - gallons	-----	19.08

RETAIL LICENSEES:

Premises inspected	-----	778	
Premises where alcoholic beverages were gauged	-----	814	
Bottles gauged	-----	15,249	
Premises where violations were found	-----	67	
Violations found	-----	84	
Type of violations found:			
Unqualified employee	----- 29	Prohibited signs	----- 3
Disposal permit necessary	----- 10	Other mercantile business	----- 3
Reg. #38 sign not posted	----- 8	Improper beer taps	----- 1
		Other violations	----- 30

STATE LICENSEES:

Premises inspected	-----	13
License applications investigated	-----	13

COMPLAINTS:

Complaints assigned for investigation	-----	455
Investigations completed	-----	424
Investigations pending	-----	185

LABORATORY:

Analyses made	-----	124
refills from licensed premises - bottles	-----	1
Bottles from unlicensed premises	-----	30

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	-----	18
Persons fingerprinted for non-criminal purposes	-----	202
Identification contacts made with other enforcement agencies	-----	151

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	-----	11	
Violations involved:			
Sale to minors	----- 5	Permitting brawl on premises	----- 1
Sale during prohibited hours	----- 5	Sale to intoxicated persons	----- 1
Permitting bookmaking on premises	----- 2	Serving women at a bar (local reg.)	----- 1
Permitting lottery activity (numbers, fight pool, baseball pool)	----- 2		
Cases instituted at Division	-----	17	
Violations involved:			
Sale to minors	----- 13	Permitting consumption during license suspension	----- 1
Permitting bookmaking on premises	----- 1	Solicitor employed by retailer	----- 1
Possessing illicit liquor	----- 1		
Cases brought by municipalities on own initiative and reported to Division	-----	12	
Violations involved:			
Sale to minors	----- 5		
Permitting brawls on premises	----- 5		
Employing female bartender (local reg.)	----- 1		
Sale during prohibited hours	----- 1		
Altering interior of premises without approval (local reg.)	----- 1		

HEARINGS HELD AT DIVISION:

Total number of hearings held	-----	46	
Appeals	----- 2	Seizures	----- 6
Disciplinary proceedings	----- 28	Tax revocations	----- 1
Eligibility	----- 6	Applications for license	----- 1

STATE LICENSES AND PERMITS ISSUED:

Total number issued	-----	1,357	
Licenses	----- 9	Social affair permits	----- 390
Employment permits	----- 165	Miscellaneous	----- 327
Solicitors	----- 52	Transportation insignia	----- 280
Disposal	----- 88	Transportation certificates	----- 26

Dated: October 4, 1955

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

OLIVERI'S, A Corp.)
Route #46 & Kimig Avenue (Formerly 6))
Lodi, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Lodi.)

-----)
August A. Alino, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On or about July 1, 1955, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Mary E. ---, age 16, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

At the hearing held herein Mary --- testified that she was born on August 21, 1938, and that she was sixteen years of age on July 1, 1955; that on "July 1", 1955, at about 1:00 a.m., she entered defendant's licensed premises with Robert --- and Larry ---; that they sat at the bar; that she had about seven drinks of rye which were paid for by Robert --- and served by Ernest J. Camlet, a part-time bartender; that she was in defendant's premises about one hour and that no one questioned her as to her age. It appears that subsequently Mary --- identified defendant's premises as the place in which she had been served but did not identify Ernest J. Camlet as the person who had served the drinks. As to her failure to identify the bartender, she testified that Camlet "lives in my home town" and "I didn't want to identify him, I guess, for reasons of my own." On cross-examination she testified that she was with Larry on "Friday"; that it was "after midnight" when they entered defendant's premises and, hence, I conclude that she entered defendant's premises about 1:00 a.m. Saturday, July 2, 1955.

At the hearing Robert testified that he had three or four drinks and did not see Mary drink; that each time he drank he "put some money on the bar"; that "Larry said to get two drinks and I passed them over". Larry testified that he had four or five whiskies. He also testified as follows:

"Q What did Mary --- have? A She was drinking too. I guess it was whiskey, in a tall glass.

Q Did you see her drinking? A Well, I gave her the drink.

Q How many drinks did you give her? A I can't be exact, but it wasn't more than four.

Q Where was she when you gave them to her? A Each time she was just coming out of the ladies' room or over at the music box.

Q Did she drink the drinks you gave her? A As far as I know, she drank it. I didn't exactly see her drink it right down. I handed it to her."

On behalf of defendant, Ernest J. Camlet testified that he did not remember serving Robert, Larry or Mary in defendant's premises on the morning of July 2, 1955, and, in fact, that he never saw Mary until a later date. He testified that "the place was crowded".

After reviewing all the testimony I am convinced that alcoholic beverages were served to and consumed by Mary on the licensed premises on the morning of July 2, 1955, as she testified. Hence, I find defendant guilty as charged.

Defendant has a prior record. Effective May 13, 1954, I suspended its license for fifteen days after it pleaded guilty to charges of selling alcoholic beverages and failing to close during prohibited hours, in violation of a local ordinance. (Re Oliveri's, A Corporation, Bulletin 1017, Item 7.) Since this dissimilar violation occurred within the past five years, it will be considered in fixing the penalty herein. The minimum suspension for sale to a sixteen-year-old minor is twenty days. Re O'Brien & Cronin, Bulletin 1052, Item 6. Under the circumstances, I shall suspend defendant's license for a period of twenty-five days.

Accordingly, it is, on this 29th day of September, 1955,

ORDERED that Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Lodi to Oliveri's, A Corp., for premises on Route #46 & Kimig Avenue (Formerly 6), Lodi, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. October 10, 1955, and terminating at 3:00 a.m. November 4, 1955.

WILLIAM HOWE DAVIS
Director.

8. ELECTION DAY - RULE 2 OF STATE REGULATIONS NO. 20 CONSTRUED AS TO SEWERAGE DISTRICTS.

September 22, 1955

Dorothy W. Cook, Clerk
Parsippany-Troy Hills Township, N. J.

This acknowledges your letter of September 19th concerning election to be held in Sewerage District No. 1 of Lake Hiawatha encompassing some election districts of Parsippany-Troy Hills Township on Saturday, September 24th, between the hours of 1:00 p.m. and 9:00 p.m., for the purpose of electing two commissioners for the District.

In view of the fact that the election is being conducted pursuant to R.S. 40:154-1(1), et seq., and particularly pursuant to R.S. 40:154-1(13), as set forth in N.J.S.A. "Acts Saved from Repeal", which fully prescribes the procedure to be followed without reference to the Election Law (R.S. Title 19), the election is not a special election within the contemplation of Rule 2 of State Regulations No. 20. See Re Duff, Bulletin 295, Item 13.

Accordingly, during the polling hours of the election, Rule 2 of State Regulations No. 20 is not applicable to holders of retail liquor licenses in the Township of Parsippany-Troy Hills.

WILLIAM HOWE DAVIS
Director:

9. MANUFACTURERS AND WHOLESALERS - REFUND OF COST OF OR ACCEPTANCE OF REVERSE CHARGE FOR TELEPHONE ORDERS FROM RETAILERS PROHIBITED.

September 30, 1955

Investigation by this Division has disclosed that you have been making a practice of reimbursing your local retail customers who place orders with you by telephone by sending to them a ten-cent piece in a folder which reads, in pertinent part, as follows:

"Thanks for the order you phoned in today.
We feel it is only proper for us to pay for the call; and are therefore attaching a dime to this card.
We are always glad to be of service.
Don't hesitate to call."

In a letter of explanation signed by you, the following explanation was made:

"For about the last 30 days we have refunded 10 cents to those local customers who have phoned in to us.

"Any customers beyond the local area have always had the privilege of reversing telephone charges. Since this privilege is not open to local customers, we have tried to equalize this service by refund, as per the enclosed card. No refunds are made in excess of 10 cents. These charges are paid from petty cash."

Your attention is directed to Rule 8 of State Regulations No. 34, which reads as follows:

"No manufacturer or wholesaler of alcoholic beverages other than malt alcoholic beverages shall furnish directly or indirectly to any wholesaler or retailer, and no wholesaler or retailer shall accept directly or indirectly from any manufacturer or wholesaler, any gift, rebate, or allowance of money or any thing of value (whether by sale, loan, gift or otherwise) or other discount or inducement, including free goods, deals, combination sales, and similar merchandising devices, except permissible discounts as and if scheduled by the manufacturer or wholesaler in the manner aforesaid and as permitted by Rule 10 hereof and State Regulations No. 21; nor shall any such manufacturer or wholesaler sell or offer to sell to a retailer any particular brand or brands of alcoholic beverages tied in with or contingent upon the retailer's purchase of, some other beverage, alcoholic or otherwise, or any other merchandise or service."

Your practice of permitting your retail customers to reverse telephone charges and your practice of refunding ten cents to local retail customers who telephone orders to you are prohibited by the quoted Rule.

You must immediately take steps to notify your customers of the discontinuance of both of these practices and must cease and desist from said practices not later than November 1, 1955.

WILLIAM HOWE DAVIS
Director.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Gunther Brewing Company
1211 S. Conkling St.
Baltimore 24, Maryland.

Application filed October 18, 1955 for Limited Wholesale License.

Flagstaff Liquor Co.
536 Fayette Street
Perth Amboy, N. J.

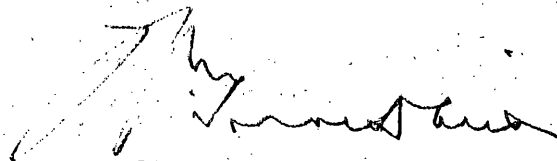
Application filed October 18, 1955 for transfer of Plenary Wholesale License from Flagstaff Foods, 536 Fayette Street, Perth Amboy, N.J.

Beth E. Richards
t/a Freightlines Equipment Co.
231-233 Cliff Street
Scranton, Pa.

Application filed October 18, 1955 for Transportation License.

Frank Petro
408 Johnstone Street
Perth Amboy, N. J.

Application filed October 19, 1955 for Transportation License.



William Howe Davis
Director.